IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

# W.A.No.1054 of 2005(A)

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AGAINST THE JUDGEMENT IN W.P.(C).12780/2004-U, DATED 24/02/2005

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**APPELLANTS**/RESPONDENTS 3 & 4:-

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1. VANCHINAD DROP STAMPING PVT.LTD,
   SANKARA SHILPAM, 14/483-D, AYYANTHOLE POST,
   THRISSUR 680 003, REPRESENTED BY ITS
   MANAGING DIRECTOR SUDHEESH BABU.

2. V.VENUGOPAL, DIRECTOR, VANCHINAD
   DROP STAMPING PVT.LTD., SHANKARA SHILPAM
   14/483-D, AYYANTHOLE POST, THRISSUR 680 003.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.E.R.VENKATESWARAN

**RESPONDENTS**/PETITIOENR & RESPONDENTS 1 & 2:-

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1. N.RAMACHANDRAN NAIR, S/O.MADHAVAN NAIR,
   THARAL HOUSE,MANNAR POST, ALAPPUZHA DISTRICT.

2. THE STATE OF KERALA, REPRESENTED BY
   CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

3. THE SALES TAX OFFICER, 4TH CIRCLE,
   THRISSUR.

R1 BY ADV.SRI.GEORGE CHERIAN (THIRUVALLA).
R2 & R3 BY SPL.GOVERNMENT PLEADER (TAXES) MR.V.V.ASHOKAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.No.1515 of 2005 IN W.A.No.1054 of 2005

DISMISSED.

Sd/- H.L. DATTU, CHIEF JUSTICE.

25/05/2007. Sd/- K.T.SANKARAN, JUDGE.

- TRUE COPY -

**H.L.DATTU, C.J. & K.T.SANKARAN, J.**

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**W.A.No.1054 of 2005**

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Dated, this the 25th day of May, 2007

**JUDGMENT**

**H.L.Dattu, C.J.**

The petitioner Sri.N.Ramachandran Nair, who is the 1st respondent herein, was the Managing Director of M/s.Jayakrishna Forgings Private Limited. The said company was amalgamated with M/s.Vanchinad Drop Stampings Private Limited by virtue of an order passed by this Court in C.P.No.4 of 1997. The learned counsel appearing for the petitioner would submit that the fact of amalgamation was intimated to the Registrar of Companies as required under sub-section (3) of Section 391 of the Companies Act and this assertion is disputed by the learned counsel appearing for the first appellant company.

2. M/s.Jayakrishna Forgings Private Limited had filed its annual returns as required under the provisions of the Kerala General Sales Tax Act, 1963 before the Sales Tax Officer, Fourth Circle, Thrissur for the assessment year 1999-2000. Since the assessing authority was not prepared to accept the return so filed by M/s.Jayakrishna Forgings Private Limited, he had issued pre-assessment notice. After receipt of the same, the Chartered Accountants of M/s.Jayakrishna Forgings Private Limited had sent a reply dated 29.1.2003 informing the Sales

Tax Officer that M/s.Jayakrishna Forgings Private Limited has been taken over and amalgamated with M/s. Vanchinad Drop Stampings Private Limited, Ayyanthole, Thrissur, the third respondent in the writ petition. They had further stated that as per the scheme of amalgamation, all the assets and liabilities were taken over by M/s. Vanchinad Drop Stampings Private Limited - the transferee company. By yet another letter dated 3.12.2003 Sri.N.Ramachandran Nair who was the Managing Director of M/s.Jayakrishna Forgings Private Limited had specifically brought to the notice of the Sales Tax Officer that the business of M/s.Jayakrishna Forgings Private Limited and all assets and liabilities including the books of accounts had been taken over by the transferee company, namely M/s.Vanchinad Drop Stampings Private Limited.

3. Though these replies were available in the records, the assessing authority on mere assumptions and presumptions has proceeded to complete the assessment proceedings against M/s.Jayakrishna Forgings Private Limited. Thereafter he had issued demand notice directing Sri.N.Ramachandran Nair to settle the dues of M/s.Jayakrishna Forgings Private Limited. Aggrieved by the order of assessment and the demand notice issued for the assessment year 1999-2000, Sri.N.Ramachandran Nair was before this Court in W.P.(C) No.12780 of 2004. This Court by its order dated 24th February, 2005 has allowed the writ petition and has directed the assessing authority to proceed to recover the tax payable by M/s.Jayakrishna Forgings Private Limited from the transferee company, namely M/s.Vanchinad Drop

Stampings Private Limited. It is the correctness or otherwise of the said order of the learned Single Judge is the subject matter in this writ appeal.

4. Learned counsel appearing for the appellants in this writ appeal would submit that under the provisions of the Companies Act amalgamation of a company is complete only when the certified copy of the orders passed by this Court has been filed with the Registrar of Companies. According to the learned counsel, since the certified copy of the order passed by this Court in granting permission for amalgamation of the first appellant Company with the first respondent Company was not filed with the Registrar of Companies, the order of amalgamation will have no effect whatsoever. Apart from this, the learned counsel would submit that annual returns were filed by M/s.Jayakrishna Forgings Private Limited and therefore, the assessing authority was justified in passing the order of assessment against the said company and therefore, the learned Single Judge was not justified in directing the Sales Tax Officer to recover the tax dues from the transferee company.

5. Per contra, the learned counsel appearing for the contesting respondent in the appeal would submit that immediately after the proceedings for amalgamation had been initiated by both the companies, the assets and liabilities and possession of M/s.Jayakrishna Forgings Private Limited had been handed over to the transferee company and therefore, the learned Single Judge was justified in directing to recover the amounts from the transferee company. The learned Special Government Pleader (Taxes) appearing for the revenue would submit that since annual returns were filed by

M/s.Jayakrishna Forgings Private Limited and since advance tax also had been paid by them, the assessing authority was justified in completing the assessment proceedings against the company which had filed its returns.

6. The question that would arise for our consideration in this appeal is whether the learned Single Judge was justified in directing the Sales Tax Officer to recover the tax dues for the assessment year 1999-2000 from the transferee company, namely M/s.Vanchinad Drop Stampings Private Limited.

7. We do not intend to debate on all the submissions made by the learned counsel, for the simple reason that for the assessment year 1999-2000 though the annual returns were filed by M/s.Jayakrishna Forgings Private Limited, its Chartered Accountants, namely M/s.Narayanan Lakshmanan & Co., by their letter dated 29.1.2003 had specifically informed the Sales Tax Officer that M/s.Vanchinad Drop Stampings Private Limited which is the transferee company has taken over the assets and liabilities of M/s.Jayakrishna Forgings Private Limited. This was pursuant to the pre-assessment notice issued by the Sales Tax Officer, Fourth Circle, Thrissur. Before completion of the assessment proceedings for the assessment year 1999-2000 by letter dated 3.12.2003 Sri.N.Ramachandran Nair who was the Managing Director of M/s.Jayakrishna Forgings Private Limited had specifically brought to the notice of the Sales Tax Officer that the transferee company had taken over all the assets and liabilities of the transferor

company including the books of accounts, etc. It is relevant at this stage to extract the correspondence of Sri.N.Ramachandran Nair with the Sales Tax Officer. The same is as under:

> "The business Jayakrishna Forgings Private Limited, Velappaya has been takenover, with the assets and liabilities including books of account and amalgamated with Vanchinad Drop Stamping Private Limited, Ayyanthole, Thrissur-3. I was the Managing Director of Jayakrishna Forgings Private Limited, prior to its amalgamation with Vanchinad Drop Stamping Private Limited, and I have severed all connections with the physical takeover of Jayakrishna Forgings by Vanchinad Drop Stamping Private Limited. With effect from the transfer date, all rights, claims, powers, contracts, interests, authorities, privileges and all properties and other assets whether movable or immovable as well as the debts, liabilities, duties and obligations of the Applicant Company shall be transferred to M/s.Vanchinad Drop Stampings Private Limited."

8. Though these two letters were available in the assessment records, the assessing authority without giving any finding on that information, has proceeded to hold M/s.Jayakrishna Forgings Private Limited liable for payment of sales tax for the assessment year 1999-2000. The findings and conclusions reached by the assessing authority are as under:

> "I have gone through the reply filed. I have also contacted the said M/s.Vanchinad Drop Stampings Private Ltd. According to them, they have not taken over the unit as explained. It is also seen from the records that the assessees M/s.Jayakrishna Forgings (P) Ltd. confirming the filing returns etc. for the year 99-2000 and 2000-01. That is, even after the said amalgamation approval by the Hon'ble High Court of Kerala as per judgment in OP No.F/1997 dated 23.2.98. This is clear evidence that M/s.Jayakrishna Forgings (P) Ltd. were doing the business transactions during 99-2000 and 2000-01. As such, I am proceeding further with the proposals."

9. We have perused the reply of M/s.Narayanan Lakshmanan & Co., Chartered Accountants of M/s.Jayakrishna Forgings Private Limited and also the reply letter of Sri.N.Ramachandran Nair dated 3.12.2003. Both of them had specifically stated that the assets and liabilities of M/s.Jayakrishna Forgings Private Limited had been taken over by M/s.Vanchinad Drop Stampings Private Limited and it is that company which was doing business for the assessment year 1999-2000. In our opinion, the assessing authority without adverting to those aspects of the matter could not have on mere surmises come to a conclusion that it was M/s.Jayakrishna Forgings Private Limited that was responsible for payment of sales tax dues for the assessment year 1999-2000. Under the Act there must be an assessment and that assessment must be against a particular person from whom the tax can be recovered. In the instant case, it was the specific case of M/s.Jayakrishna Forgings Private Limited that they had not conducted any business for the assessment year 1999-2000. This ought to have been verified by the assessing authority before holding that they were responsible for payment of sales tax dues. This aspect of the matter was not taken into consideration by the learned Single Judge while allowing the writ petition and fixing the liability on the transferee company. In that view of the matter, we cannot either sustain the order of assessment passed by the Sales Tax Officer or the orders passed by the learned Single Judge of this Court in W.P.(C) No.12780 of 2004. In our opinion, the matter now requires to be remanded to the Sales Tax Officer to redo the matter in accordance with law taking into

consideration the objections filed by the Chartered Accountants of M/s.Jayakrishna Forgings Private Limited and also Sri.N.Ramachandran Nair who was the Managing Director of that Company. The assessing authority while redoing the matter would issue fresh notice to M/s.Jayakrishna Forgings Private Limited, the transferee company and also to Sri.N.Ramachandran Nair and after affording them a reasonable opportunity of hearing would complete the assessment for the assessment year 1999-2000. Accordingly, the following:

Order

The writ appeal is allowed. The order passed by the learned Single Judge in W.P.(C) No.12780 of 2004 is set aside. The order passed by the Sales Tax Officer for the assessment year 1999-2000 dated 23.1.2004 is also set aside. The matter is remitted back to the assessing authority for redoing the same in accordance with law and in the light of the observations made by us in the course of the order. Ordered accordingly.

**H.L. DATTU,**
**Chief Justice.**

**K.T. SANKARAN,**
**Judge.**

vns/DK